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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,818	06/07/2002	Hans Bruder	396/50809	2416

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EXAMINER

MACARTHUR, VICTOR L

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 11/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

Office Action Summary	Application No. 10/030,818	Applicant(s) BRUDER, HANS	
	Examiner Victor MacArthur	Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

With regard to the interview conducted on October 8, 2003 the applicant's representative states "the Examiners indicated claim 10 is allowable over the cited references" (p.5, para.2). This is not an accurate account of the interview. The examiners merely stated that the final rejection of claim 10, in paper #14, was overcome by the applicant's arguments against the examiner's use of case law. In fact, claim 10 is newly rejected below with prior art of record (Mori U.S. Patent 4410157).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4410157 to Monti (see attached marked-up copy of fig.3 and print copy of columns 3-4).

Claim 10. Monti discloses (fig.3) a supporting profile for erecting a structure, the supporting profile comprising: an elongated hollow body (14A) having first (top of 14A) and second (bottom of 14A) ends and a longitudinal groove (20) on the outside of the body; an adapter piece (48) inserted into and secured to the first end of the elongated body, the adapter piece having a receiving chamber (66); and a disk-shaped end piece (Top 52, as seen in attached

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marked-up copy) disposed at the first end and connected to the adapter piece, wherein the disk-shaped end piece is fastened to the adapter piece by fasteners (68, 82, col.5, ll.20-26 and attached print copy of col.3-4, para.17-18). The receiving chamber of Monti is fully capable of receiving a turnbuckle and thus meets the functional limitation “for receiving a turnbuckle”. It is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, *i.e.* the functional limitation “for receiving a turnbuckle”, is given only limited patentable weight since it does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963).

Claim 11. Monti discloses that the end piece has a concave recess (64) adapted (via 82) to an external curvature of a round profile.

Claim 12. Monti discloses that the end piece has an opening (66). The Monti opening is fully capable of having a turnbuckle pass through and thus meets the functional limitation “for the turnbuckle to pass through”.

Claim 13. Monti discloses (fig.2) that the end piece has a joint (28) for connection to another profile (via 12).

Claim 14. Monti discloses that the joint includes a first disk (32) which extends perpendicular to the end piece and has a center bore (receiving 34), and a second disk (30) having a center bore (receiving 34) and being connected with the first disk by means of a bolt (34) extending through the center bores and acting as an axis of rotation, the second disk having a fastening device (12) for connection to another profile.

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Claim 15. Monti discloses that the second disk is connected (via 12) to another end piece.

Claim 16. Monti discloses that the second disk has a clamping part (36, 38) that is configured (via 36) for insertion into longitudinal grooves of another supporting profile.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4410157 to Monti.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4410157 to Monti in view of USPN 2538483 to Summers.

Claim 17. Monti does not disclose first and second hemispheres. Summers teaches (col.1, ll.40-50 and figs.1-4) a hemisphere (10) provided for the lateral covering of a disc (fig.2, at base of 15) wherein the hemisphere has a center bore (14) with a thread and, by means of this thread, is screwed onto a thread at the end of a bolt. Summers teaches (col.1, ll.1-5) that hemispheres are beneficial for the purpose of covering unsightly exposed ends of hardware. Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the bolt of Monti to receive hemispheres, as taught by Summers,

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for the purpose of covering unsightly exposed ends of hardware. The word "hemisphere" is taken by the examiner to mean "half of a roughly spherical body" in accordance with Merriam-Webster's Collegiate Dictionary Tenth Edition.

Claim 18. Monti as modified by Summers suggests (Summers) that the hemispheres have a threaded center bore (14) and can be screwed onto a threaded end of a bolt.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (703) 305-5701. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (703) 308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

VLM

VLM
October 28, 2003



Lynne H. Browne
Supervisory Patent Examiner
Technology Center 3600

Attachments: 1 marked-up copy of fig.3 from U.S. Patent 4410157
1 print copy of columns 3-4 from U.S. Patent 4410157